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Ethics vs. Law – What Do YOU Think?

If people act *legally*
are they also acting *ethically*?



If you *can* do it,
does that mean you *should* do it?



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Key Concepts

1. Your conduct involves both **legal requirements** and **ethical considerations**
2. The law places **limits** on:
 - **Voting**
 - **Contracting**
 - **Gifts & Favors**
 - Misuse of Confidential Information
 - Misuse of Public Property
 - Other offenses related to misuse of public office
3. Your **ethical obligations** include:
 - Obeying all applicable laws
 - Upholding integrity and independence of office
 - Avoiding impropriety in exercise of official duties
 - Faithfully performing duties of office
 - Conducting board business in open and public manner
(G.S. 153A-53; 160A-86(b))



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You Have A Choice



You have a **choice** about how to act; you should evaluate **legal** and **ethical** factors in deciding how to act



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Deciding How to Act: Two Questions

Is it legal? + Is it ethical? = Your Decision

yes
 no
 maybe

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CIVILITY

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What is Civility?

Definition of CIVILITY

plural civilities

- archaic* : training in the humanities
- a : civilized conduct; especially : COURTESY, POLITENESS in our politics
 - b : a polite act or expression

One Word: What is Civility?

One Word: What is LACK of Civility?

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Remember Your Ethical Obligations:

- Obeying all applicable laws
- Upholding integrity and independence of office
- Avoiding impropriety in exercise of official duties
- Faithfully performing duties of office
- Conducting board business in open and public manner

(G.S. 153A-53; G.S. 160A-86(b))



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SOG Model Code Standard:

Acting With Integrity

- Treating other board members and the public with respect
- Honoring the opinions of others even when the board members disagree with those opinions
- Recognizing that they are part of a larger group and acting accordingly



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Local Officials as Models of Civility



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COMPLIANCE & ENFORCEMENT



RULES
ARE
RULES.

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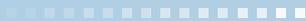
Compliance



Compliance is voluntary, unless the actions violate a state law and that state law provides a remedy



But... there is always the court of public opinion!



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What is Censure?

Resolution expressing dissatisfaction with the board member's conduct

Has no legal effect!



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What Can Be Done About Unethical Behavior?

- Recall: No general authority (some units have charter provisions allowing it)
- Amotion: Common law power to remove board member - very high standard and due process required



Coates' Canons Blog
<http://canons.sog.unc.edu/removing-an-elected-official-by-amotion-judge-says-it-can-be-done/>



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CONFLICTS OF INTEREST



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Duty to Vote

- City and County governing board members have a **statutory duty to vote**
- **No authority to "recuse" oneself from voting**
- Can **only** be excused from voting for conflicts of interest defined by statute



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Cities: “Default Yes” Rule

- **Cities Only: G.S. 160A-75**
- If a city council member
 - is present
 - has not been excused from voting
 - yet fails to vote
 the member will be counted as voting **yes**
- Some county boards include this rule in their local board rules of procedure



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Cities: Limited Authority to Abstain

- No general authority to abstain from voting
- A city board member who is present but does not vote **on the repeal or amendment of a zoning ordinance** is recorded as **abstaining** and is **not** counted as voting “yes”
- Still requires a majority of members not excused to pass; 2/3 on first reading



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Can You Vote? 2 Questions:

1. Does the Matter Involve . . . ?	2. Do You Have A . . . ?	If So . . .
Legislative Land Use <i>(examples: rezoning or text amendment)</i> GS 153A-340(g); 160A-381(f)	Direct, substantial, and readily identifiable financial interest in the matter	Cannot participate or vote (Statutory prohibition)
Quasi-Judicial Hearing <i>(examples: special use permit or appeal of a personnel decision)</i> GS 153A-345.1; GS 160A-388(e)(2)	Fixed opinion prior to the hearing, undisclosed ex parte communications, close familial, business, or other relationship with an affected person, or financial interest in outcome	Cannot participate or vote (Statutory prohibition)
Contract GS 14-234	Prohibited direct benefit that would be derived by you or your spouse under the contract <i>and</i> the contract is allowed under an exception	Cannot participate or vote (Statutory prohibition)
All Other Matters GS 153A-44; GS 160A-75	Financial interest in the matter or the matter involves your own official conduct	May be excused from voting (Statute authorizes board to excuse member from voting)

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“Own Financial Interest”

- Board member **may** be excused from voting if the matter involves his or her own financial interest
- No definition of “own financial interest”
- Factors to consider:
 - Number of people affected
 - Extent of financial interest (positive or negative)
 - Likelihood of impact

Financial Interest Continuum

- 
- Many people
 - Nominal impact
 - Remote likelihood
 - Board member only
 - Significant impact
 - Strong likelihood

<https://canons.sog.unc.edu/board-member-financial-interest-mapping-the-points-on-the-continuum/>



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Legal Authority for Being Excused from Voting (G.S. 153A-44; G.S. 160A-75)

Prohibited When:

- Legislative zoning decisions in which you have a **financial interest**
- Quasi-judicial decisions in which you have a **fixed opinion, bias, financial interest, or close personal relationship**
- Public contracts from which you derive a **direct financial benefit**

May Be Excused If:

- Matter before board involves your **own financial interest**
- Matter before board involves your **official conduct**



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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)



Making or administering a contract



If you're involved at any point in the contracting process, you're involved in "making or administering" the contract



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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)



Making or administering a contract

+



Direct benefit to you or your spouse



There's a **direct benefit** if you or your spouse:

1. Own more than 10% of the company,
2. Receive income or commission from the contract, or
3. Acquire property under the contract

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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)



Making or administering a contract

+



Direct benefit to you or your spouse

=



Class 1 misdemeanor* & void contract*



***Unless an exception applies:** banks and utilities, friendly condemnation, spouse employment, public assistance programs, small jurisdictions

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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

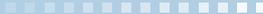
- Not like other financial conflicts - cannot cure this conflict by being excused from voting
- Unless an exception applies, cannot enter into contract – period!
- If exception applies, conflicted official cannot participate or vote



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What Do You Think – Ethical v Legal?



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Is it Ethical? Nonprofit Board

A city council member also serves on the Chamber of Commerce Board of Directors. The Chamber is seeking grant funds from the city to promote tourism. The grant request comes before the city council for consideration.



**Is it ethical for the council member to participate in the discussions and vote on the grant award?
Why or Why Not?**



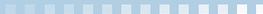
30

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Conflict of Roles?

- Service on nonprofit is not a **financial conflict** and missions may be in alignment
- But consider possible **future conflicts**:
 - Legal or financial dispute – council member on both sides
 - Expectation of allegiance by both boards
 - Confidentiality of information



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Is It Ethical? Mother Rezoning

A city council member's mother owns property adjacent to an area the city is considering rezoning commercial. The member's mother is strongly opposed to the rezoning because it will affect her property value and has organized a vocal community opposition group.

**Is it ethical for the council member to vote on the rezoning petition?
Why or Why Not?**



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Is It Legal? Mother Rezoning

A city council member's mother owns property adjacent to an area the city is considering rezoning commercial. The member's mother is strongly opposed to the rezoning because it will affect her property value and has organized a vocal community opposition group.

Is it legal for the council member to vote on the rezoning petition?



34

Is It Ethical? Sister Permit

A city council member's sister is a local developer and has applied for a special use permit for a major project in the city.

**Is it ethical for the council member to vote on her sister's permit application?
Why or Why Not?**



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Is It Legal? Sister Permit

A city council member's sister is a local developer and has applied for a special use permit for a major project in the city.

Is it legal for the council member to vote on her sister's permit application?



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Is It Ethical? Sister Contractor

A city council is considering awarding a multi-million dollar construction contract to a council member's sister. The sister's company is the lowest responsive, responsible bidder.

**Is it ethical for the council member to vote on her sister's construction contract?
Why or Why Not?**



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Is It Legal? Sister Contractor

A city council is considering awarding a multi-million dollar construction contract to a council member's sister. The sister's company is the lowest responsive, responsible bidder.



Is it legal for the council member to vote on her sister's construction contract?



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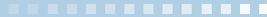
Is It Ethical? Council Member Engineer

An engineer under contract with the city to design an upgrade to the city's water system is elected to city council.



Is it ethical for the city to continue to use the council member's engineering services after she takes office?

Why or Why Not?



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An engineer under contract with the city to design an upgrade to the city's water system is elected to city council.



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How to Manage Perceptions



Many local codes of ethics require all board members to **“avoid the appearance of impropriety in the exercise of their official duties.”**

If you are required by law to vote, how do you manage the perception that you have a conflict of interest?



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GIFTS & FAVORS



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Gifts and Favors from Contractors

G.S. 133-32



Prohibited Giver:
Contractor or vendor who is:
1. Past (within 1 year)
2. Current
3. Potential future



= Class 1 misdemeanor, unless an exception applies



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Gifts and Favors from Contractors

G.S. 133-32



Prohibited Recipient:

Public officer or employer who:

1. Prepares plans or specifications for public contracts, or
2. Awards or administers public contracts, or
3. Inspects or supervises construction



= Class 1 misdemeanor, unless an exception applies



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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honorariums Souvenirs Banquets Professional Organizations Family / Friends



Honoraria



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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honorariums Souvenirs Banquets Professional Organizations Family / Friends



Souvenirs / advertising items of nominal value



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Gifts and Favors from Contractors
G.S. 133-32

Exceptions:
 Honorariums Souvenirs Banquets Professional Organizations Family / Friends



Meals at banquets

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Gifts and Favors from Contractors
G.S. 133-32

Exceptions:
 Honorariums Souvenirs Banquets Professional Organizations Family / Friends



Gifts to professional organizations

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Gifts and Favors from Contractors
G.S. 133-32

Exceptions:
 Honorariums Souvenirs Banquets Professional Organizations Family / Friends



Non-business customary gifts from friends or family (must be reported to agency head)

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Can You Accept It?

A city council enters into a public-private partnership with a major league baseball team to build a stadium. The team's owner offers free season tickets to the council members and their families and invites them to sit in his skybox.



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Can You Accept It?

A consultant not under contract with the city invites the city's council members to join her for dinner during the NCLM Annual Conference.



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Can You Accept It?

A city's solid waste contractor delivers a holiday gift basket to the Town Hall addressed to "Our Favorite City Council, With Gratitude for Your Business" and offers to pay for the city's employee holiday party.



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Can You Accept It?

A city is considering purchasing a new fire truck.

A manufacturer offers to pay for council members to travel to his production facility in Las Vegas to inspect the variety of customized fire trucks and fire-fighting equipment his company offers.



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Gifts to the Local Government Itself

- Local governments are authorized to accept gifts given to the unit itself

Examples:

- Little League Sponsors
- Donations
- Paying for travel

Remember:
Even if it is legal,
it might not be ethical!

Travel expenses permissible **ONLY** if:

- The local government **legally** can pay for the travel expense because it serves a public purpose
- The local government in fact **chooses** to pay for that travel expenses
- The expenses are reimbursable under the unit's **local policy**

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Gift Ban Rule of Thumb

When In Doubt, Do Without!

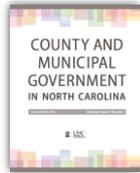


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Additional Resources



<https://www.sog.unc.edu/resources/microsites/ethics-local-government-officials>



<https://www.sog.unc.edu/publications/books/county-and-municipal-government-north-carolina-second-edition-2014-hard-copy-format>



<https://canons.sog.unc.edu/>

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Contact Us If We Can Help You!

Frayda Bluestein
919.966.4203

bluestein@sog.unc.edu

Norma Houston
919.843.8930

nhouston@sog.unc.edu



One Last Thing

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One Last Thing . . .

Don't Forget Your Verification Form!

To get credit for today's ethics training:

- ✓ Fill out **both** parts of the verification form
- ✓ Keep the top part for **your records**
- ✓ Give the bottom part to your **board clerk – do not send to the SOG!**
- ✓ Link to download the form is on the next slide



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Forms and Evaluation

The **CLE** and **Ethics Verification forms** are PDF documents that will open by clicking the corresponding links below:

- ❖ [Elected Officials Verification](https://sakai.unc.edu/x/dlMJ51)
(<https://sakai.unc.edu/x/dlMJ51>)
- ❖ [Attorneys Self-Report CLE Form](https://www.ncle.org/for-lawyers/forms/)
(<https://www.ncle.org/for-lawyers/forms/>)

You can return to the webinar room by clicking the webinar room icon from your taskbar



Please complete our [evaluation](#).